

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ADONIS RENARD TARBUTTON, #1172318 §

VS. § CIVIL ACTION NO. 4:15cv852

DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

Petitioner Adonis Renard Tarbutton, a prisoner confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition should be dismissed. Petitioner has filed objections.

Petitioner is challenging his Collin County conviction for the offense of aggravated robbery. He previously filed a petition for a writ of habeas corpus in this Court challenging the conviction, which was dismissed on the merits. *Tarbutton v. Director, TDCJ-CID*, Civil Action No. 4:05-CV-293 (E.D. Tex. Aug. 10, 2006). The Fifth Circuit denied his motion for a certificate of appealability. *Tarbutton v. Quartermann*, No. 06-41322 (5th Cir. July 16, 2007). The Fifth Circuit recently denied him permission to file a second or successive petition. *In re: Tarbutton*, No. 15-41206 (5th Cir. Nov. 19, 2015). Petitioner, nonetheless, filed the present successive petition. Magistrate Judge Nowak correctly concluded that the petition must be dismissed because Petitioner has not received the permission of the Fifth Circuit to file a second or successive petition. *Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003) (Federal courts lack subject matter jurisdiction to consider a second or successive petition unless the Fifth Circuit has granted the petition permission to file it.).

In his objections, Petitioner states that he filed a civil rights lawsuit challenging his conviction in 2006. The records of the Court reveal that his civil rights lawsuit was dismissed with prejudice since it was not the proper vehicle for challenging a conviction. *Tarbutton v. Dretke*, Civil Action No. 4:06cv135 (5th Cir. Oct. 25, 2006), *appeal dismissed*, No. 06-41634 (5th Cir. Feb. 9, 2007). His reference to the prior civil rights lawsuit is irrelevant to the issue of whether he may proceed at this time with a second or successive petition. This Court lacks subject matter jurisdiction to consider a second or successive petition because the Fifth Circuit has not granted him permission to file it.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for lack of subject matter jurisdiction. A certificate of appealability is **DENIED**. All other motions not previously ruled on are hereby **DENIED**. It is finally

ORDERED that the Clerk of Court shall return unfiled any new petitions for a writ of habeas corpus submitted by Petitioner Adonis Renard Tarbutton regarding his conviction unless he shows that he has received permission from the Fifth Circuit to file it.

SIGNED this 25th day of January, 2016.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE